

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 622

In Re: Fyles Brothers, Inc., Alleged Violation of June 15, )  
2009, as reported by Waitsfield-Fayston Telephone )  
Company, Inc., d/b/a Champlain Valley Telecom )

Order entered: 1/22/2010

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Fyles Brothers, Inc. ("Respondent").
2. Incident Date: June 15, 2009
3. Incident Location: 1978 Lake Road, Bridport, VT
4. Name and Address of Company that Reported the Incident to the Department: Waitsfield-Fayston Telephone Company, Inc., d/b/a Champlain Valley Telecom, P.O. Box 9, Waitsfield, VT 05673-0009
5. Date Incident Reported to Effected Utility: June 15, 2009
6. Date NOPV issued by Department: September 25, 2009 (#1654)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 6/16/09, Fyles Brothers Inc. made a notice of excavation activities to install a propane gas line to Dig Safe System Inc. Waitsfield Champlain Valley Telecom accurately located and marked its underground facilities in the area of the proposed excavation. Fyles Brothers Inc. used a trencher machine within 18" of the marks. This machine struck and damaged the marked WCVT service wire resulting in a subsequent loss of service to the homeowner for 2 hours. Fyles Brothers Inc. notified WCVT of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to Fyles Brothers, Inc. during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006b

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Three Hundred Dollars (\$300.00), and attendance at a Department-approved underground damage prevention seminar.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.<sup>1</sup>

### **Conclusion and Order**

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.<sup>2</sup>

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Fyles Brothers, Inc., shall pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Fyles Brothers, Inc., shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

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1. *See*, Respondent's filing of 10/19/09.

2. *See*, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 22<sup>nd</sup> day of January, 2010.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: January 22, 2010

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*